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SUPREME COURT OF THE UNITED STATES.

No. ~~341.~~ 173. 95.

THE COUNTY OF BEAVER, PLAINTIFF,

vs.

MAXWELL WOODHULL.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE U. S. FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

G. S. GIDEON, Printer, 511 Ninth street, Washington.

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Among the rolls, records, and judicial proceedings of the circuit court of the United States for the western district of Pennsylvania, in the third circuit, may be found the following words and figures, viz:

No. 7 of November term, 1858.

MAXWELL WOODHULL, a citizen of the State of New York, vs. THE COUNTY OF BEAVER, in the Commonwealth of Pennsylvania.	Action of debt.

And now, to wit, May 19th, 1859, the parties in this case being at issue, a jury being called, empannelled, and sworn, and the cause heard, and the court being divided in opinion upon the points requested by the defendant's counsel to charge the jury, defendant's counsel requested the following certificate of division of opinion to be certified to the Supreme Court of the United States, which is done:

Copy of certificate of division of opinion.

In the circuit court of the United States for the western district of Pennsylvania.

MAXWELL WOODHULL, citizen of the State of New York, vs. THE COUNTY OF BEAVER.	

This action was instituted in debt for forty-six different cou-

pons, payable for interest in various bonds, declared to be payable to the lawful holders thereof, and at specified periods, each coupon being for thirty dollars, due semi-annually in the city of New York; they have also claiming to receive for goods sold and delivered money found to be due and interest in divers coupons, warrants, and promises in writing; to which the said defendant plead nihil debet; whereupon, upon issue joined, the said cause was tried before the circuit court of the United States for the western district of Pennsylvania, at Pittsburgh, May

The plaintiff on trial offered in evidence an act of the Cleaveland and Pittsburgh Railroad Company, passed by the legislature of Pennsylvania, passed 18th April, 1853, embracing an act of the legislature of Ohio to revive and amend an act to incorporate the Cleaveland and Pittsburgh Railroad Company, passed 14th March, 1836, authorizing the extension of road into Pennsylvania under certain provisions in the said original act. 11th section of Ohio act authorized the right of company to construct railroad "to some point in the direction of Pittsburgh, in the State line between Ohio and Pennsylvania, on the Ohio river."

The 7th section of Pennsylvania act provided—

"That said company is hereby authorized to extend their railroad into this (Pennsylvania) State from the point where it may cross the west line of this State, in the county of Beaver, and to continue it up the valley of the Ohio river, and connect with any railroad running in the direction of or terminating in Pittsburgh; also, section 17th of an act entitled inter alia, and to authorize the counties of Beaver and Allegheny to subscribe to the capital stock of the Cleaveland and Pittsburgh Railroad Company, passed April 7th, 1853, by the legislature of Pennsylvania, which is as follows:

"That the county of Beaver and the county of Allegheny be, and they are hereby, authorized to subscribe to the capital stock of the Cleaveland and Pittsburgh Railroad Company, and to make payments on such terms and in such manner as may be agreed upon by said company and the proper county: Provided, That the amount of subscription by Beaver county shall not exceed one hundred thousand dollars, and that the subscription of Allegheny county shall not exceed the sum of two hundred thousand dollars. The amount thereof shall be fixed and determined by one grand jury of the proper county, and upon report of such grand jury being filed, it shall be lawful for the county commissioners to carry the same into effect, by making in the name of the county the subscription so directed by said grand inquest:" Provided, further, That whenever bonds of the respective counties are given in payments of subscriptions, the same shall not be sold by said railroad company at less than par value, and no bond shall be in less amount than one hundred dollars: And provided, further, That such bonds shall not be subject to taxation until the clear profit of said road shall amount to six per cent. upon the cost

thereof; also, was read the act supplemental to an act entitled An act to incorporate the Cleaveland and Pittsburg Railroad Company:

Sec. 1. That the Cleaveland and Pittsburg Railroad Company be, and it is hereby, authorized to sell any bonds held by it in payments for subscriptions made to the capital stock of said company by the counties of Beaver and Allegheny, at such rates below par as may be agreed upon between said company and the parties purchasing the same: Provided, That no sale shall be consummated until the commissioners of the county which issued the bonds shall have by resolution determined the lowest price at which said railroad company may sell the same, said resolution to be recorded in the minutes of their proceedings; and so much of any act or acts of assembly as is hereby altered or supplied be, and the same is hereby, repealed. Passed 2d March, 1855.

Also following:

In the court of quarter sessions of the place in and for said county, at June term, 1853, before the Hon. Daniel Agnew, president, and John Carothers and Joseph Irwin, esquires, associate judges of said court, in the matter of the petition of citizens of the county of Beaver, in pursuance of an act of the legislature of the Commonwealth of Pennsylvania, authorizing the counties of Allegheny and Beaver to subscribe to capital stock of the Cleaveland and Pittsburg Railroad Company to the amount of three hundred thousand dollars, one hundred thousand of which are not to exceed that sum to be subscribed by the county of Beaver. The amount thereof shall be fixed and determined by one grand jury of the proper county, and bonds of the county are not to be sold at less than par value, and to be payable in thirty years, and said company to pay the interest. The law provides that the money subscribed by counties of Beaver and Allegheny county, shall be expended upon the line of said Cleaveland and Pittsburgh railroad, within the county of Beaver." They therefore respectfully request the grand jury of said county to report that the commissioners of said county are authorized to subscribe to the capital stock of the said Cleaveland and Pittsburgh Railroad Company one hundred thousand dollars, on such terms and such manner as may be agreed upon by said company and the proper county, and that the court would be pleased to direct that this their prayer be laid before the said jury. Whereupon, the prayer of the petitioners was presented by the court in a clear and lucid manner to the grand jury of said county for their consideration; whereupon, the grand jury made the following presentment:

GRAND JURY ROOM, June 8th, 1853.

The grand jury in session for June term court of common pleas in and for Beaver county, would state that it has had under consideration the subscription of one hundred thousand dollars to the

Cleaveland and Pittsburgh Railroad Company stock, do most respectfully recommend the proper commissioners of said county to make the subscription, in conformity to the act of the general assembly in relation to the same, passed at their last session.

(Signed) JOHN IMBREE, *Foreman.*

And now, to wit, June 8th, 1853, the court direct that a copy of the foregoing presentment, duly certified, be furnished the commissioners of the county of Beaver by the clerk of the court of quarter sessions of said county.

By the court.

Attest: WM. K. BODEN, *Clk.* [SEAL.]

A true copy. Attest: A. R. MOORE,
Clerk to Commissioners.

Dec. 31st, 1858.

Also, following authenticated minutes:

July 15th, 1853.

Board of commissioners of Beaver county in session, full board present, passed the following resolution, to wit:

Resolved, That the county commissioners on behalf of the county of Beaver do this day agree to subscribe one thousand shares stock in the Pittsburgh and Cleaveland railroad, to be paid in county bonds, thirty years after date, with interest payable semi-annually, which interest the company agrees to pay as it falls due, and deduct it from the dividends which may accrue to the county of Beaver from the aforesaid stock.

March 13th, 1855.

Commissioners Beaver county in session. Messrs. James C. Ritche, David Kinney, and Wm. P. Phillips present, passed the following resolution, to wit:

Resolved, In pursuance of the terms and provisions of an act of the general assembly of the Commonwealth of Pennsylvania, entitled an act supplemental to an act entitled an act to incorporate the Cleaveland and Pittsburgh Railroad Company, passed the second day of March, A. D. one thousand eight hundred and fifty-five, that it is hereby determined and agreed that the said Cleaveland and Pittsburg Railroad Company shall or may sell, negotiate, or dispose of any bond or bonds of the county of Beaver owned or held by said railroad company, at any rate below par not less than seventy-five cents on every dollar for which said bond or bonds were issued.

Attest: H. B. ANDERSON, *Clk.*

Hugh B. Anderson, being duly sworn, stated he had been the clerk of the county commissioners of Beaver county, and identi-

fied coupons as signed in his own handwriting; a bond shown and authenticated, being No. 20. 100 bonds of a similar character issued, of $1,000 each, dated 15th Sept., 1853, and all delivered short time after execution to Cyrus Prentess, the president of Pittsburgh and Cleaveland Railroad Company. There was no other than the one thousand dollar share subscribed, as he recollects, the 15th July, 1853.

Also, following as authenticated:

At a meeting of the board of county commissioners of Beaver county, Pennsylvania, held at their office in the borough of Beaver, this fifteenth day of July, 1853, it was

Resolved, That the said county commissioners in behalf and for the county of Beaver do this day agree to subscribe for two thousand shares of the stock of the Cleaveland and Pittsburgh Railroad Company, amounting to the sum of one hundred thousand dollars, payable in bonds of said county, thirty years after date, in sums not less than one thousand dollars each, with coupons attached to each for the interest, payable semi-annually from the date of said bonds, at the rate of six per cent. per annum during the said thirty years, upon the following terms:

1st. That the said Cleaveland and Pittsburgh Railroad Company, by their stockholders, do authorize the president and directors of said company to accept said subscription, and to receive in payment for the said two thousand shares of stock in the said Cleaveland and Pittsburg Railroad Company as cash the said bonds of Beaver county.

2d. That said stockholders do authorize the president and directors of said company to issue certificates of stock to the said county of Beaver as may be required by the county commissioners, in sums not less than one hundred dollars, bearing interest for thirty years after date, at the rate of six per cent. per annum, payable semi-annually on the same days and at the same place or places as the said interest on the said county bonds are made payable.

3d. That said stockholders and president and directors of the said Cleaveland and Pittsburgh Railroad Company do pledge the stock of the said railroad, as also the real or personal property belonging to or which may come into possession or ownership of said company, to the county of Beaver for the faithful payment of the said semi-annual interest on the said certificates of stock so issued to the said county during the term of thirty years from the date of the same; and further, to pay the said semi-annual interest becoming due on said certificates of stock during the aforesaid term of thirty years, unto the holders of the said county bonds on the said coupons respectively, on the same days and at the same place or places as the said interest on the said bonds are payable.

4th. That said stockholders and president and directors of said Cleaveland and Pittsburgh Railroad Company do further pledge

said company to pay over to the said county all excess of dividend or dividends which may be made at any and all times during said thirty years by said company out of the profits, earnings, and proceeds of said railroad, above the six per cent. payable on said certificates as aforesaid.

5th. That said stockholders and president and directors of said railroad company do agree and bind said company to pay all State, county, and municipal taxes which may be assessed at any time on dividends, bonds and certificates issued by either party, and forever release said county, and bind said company to protect said county from any obligation to pay the same to said railroad company or its assigns; and should the said county pay any such tax, the said company agree to pay over the said sum or sums to the said county, and that said Cleaveland and Pittsburgh Railroad Company bind itself to the said Beaver county to expend the said subscription of one hundred thousand dollars so to be made by said county upon the line of said road within the county of Beaver; that said Cleaveland and Pittsburgh Railroad Company do agree to pay the expenses for procuring and executing the blank bonds, certificates, and coupons, and all other expenses in respect to this transaction of said business.

In testimony whereof, we have hereunto set our names as commissioners of Beaver county, and affixed the seal of said county, the day and year first written.

(COUNTY SEAL.)

W. C. PLONTS,
J. A. SHOATES,
J. C. RITCHE.
} *Commissioners Beaver county.*

Attest: H. B. ANDERSON,
Clerk to Commissioners.

Also, following as authenticated:

Copy of resolution passed by the stockholders of the Cleaveland and Pittsburgh Railroad Company, at their meeting on Aug. 23d, 1853:

Resolved, That the directors of this company be, and they are authorized and empowered, to accept the subscription of the county of Beaver, in the State of Pennsylvania, to the capital stock of this company, subject to the conditions and upon the terms prescribed in the resolutions of the county commissioners of Beaver co., bearing date July 15th, 1853.

Copy of resolution passed by the president and directors of the Cleaveland and Pittsburgh Railroad Company, at their meeting on Oct. 4th, 1853:

Resolved, That this board accept the subscriptions of the counties of Alleghany and Beaver, in Pennsylvania, to the capital stock of this company, subject to the conditions, and upon the terms

prescribed in the resolutions of the county commissioners of said counties, those of Alleghany county bearing date July 13th, 1853, and those of Beaver county bearing date July 15th, 1853.

OFFICE CLEAVE. AND PITTS. R. R. Co.,
Cleaveland, Oct. 13th, 1853.

It is hereby certified that the above resolutions are correctly copied from the journal in this office, pages 121 and 122.

Witness my signature and the seal of the company.

(Signed) SAML. HOLGAMLY, *Secretary.* [SEAL OF R. R. CO.]

There was read a copy of bond No. 20, as proved:

This is to certify, that as the county of Beaver, in the Commonwealth of Pennsylvania, is indebted to the Cleaveland and Pittsburgh Railroad Company in the sum of one thousand dollars, which sum said county promised to pay thirty years after date hereof to the said Cleaveland and Pittsburgh Railroad Company or bearer, at the office of the Ohio Life Insurance and Trust Company, in the city of New York, with interest, at the rate of six per cent. per annum, payable semi-annually on the 15th day of March and September, in each year, upon the delivery of the coupons severally hereunto annexed, at the said office of the Ohio Life Insurance and Trust Company in New York; for which payments of principal and interest well and truly to be made, the faith and credit and property of the said county of Beaver are hereby solemnly pledged, under the authority of an act of assembly approved the 17th of April, 1853, and in pursuance of the resolution passed by the board of commissioners of Beaver county, on the 15th July, 1853.

In testimony whereof, and in pursuance of said act and resolution of the county commissioners, they have signed and the clerk of said commissioners has countersigned these presents, and have caused the seal of said county to be affixed, this 15th of September, 1853.

MOSES B. WELSH,
J. A. SHOALES,
J. C. RITCHE. } *Commissioners.*

HUGH B. ANDERSON,
Clerk of Commissioners.

Endorsement in bond, as follows:

OFFICE CLEAV. AND PITTS. R. R. Co.,
Cleaveland, Oct. 20th, 1853.

For value received, the Cleaveland and Pittsburgh Railroad Company assigns the within bond to or bearer, and guaran-

tees the punctual payment of the interest thereon, as it may fall due, at the place and time specified.

By order of the board of directors of said company.

CYRUS PRENTISS, *President.*

And also, were authenticated and in evidence forty six coupons, part payable 15th September, 1857, and the others 15th March, 1858, of the tenor and signature, as follows:

Warrant No. 8, for thirty dollars, being for six months' interest on bond No. 8, payable on the 15th day September, 1857, at the office of the Ohio Life Insurance and Trust Company in the city of New York.

$30. H. B. ANDERSON, *Clerk.*

Also, was produced and read in evidence the original subscription stock to the county of Beaver, as follows:

No. 17. Two thousand shares.

CLEAVELAND AND PITTSBURGH RAILROAD COMPANY.

Beaver extension, perpetual. Chartered March 14th, 1836.

Capital $3,000,000 dollars.—Shares $50 each.

This is to certify that the county of Beaver, State of Pennsylvania, is entitled to two thousand shares of the capital stock of the Cleaveland and Pittsburgh Railroad Co., which are transferable only in the books of said company by the said stockholder or its representative or attorney, on surrender of this certificate.

(SEAL OF R. R. CO.)

Dated at Cleaveland this 15th day of Sept., 1853.

CYRUS PRENTISS, *Prest.*

SAML. FOLYAMBU, *Secty.*

The book of minutes of commissioners of Beaver co., produced by A. R. Moore, clerk of commissioners of Beaver county, and the original proceedings read, said book indicating no further authority to subscribe, or any subscription made but that as provided by the resolution of 15th July, 1853, read in evidence.

The plaintiff in said case here rested, and thereupon, the defendant's counsel prayed the court to instruct the jury on the following points of law upon the facts proven.

1st. That the power of counties and municipal bodies in their corporate capacity is specially derived from legislative enactments, and no general discretion can be implied to subscribe stock to railroad or other companies, or to borrow money, or obtain credit on bonds or other instruments in payment thereof.

2d. That accordingly, the commissioners of the county of Beaver,

under the act of 7th April, 1853, possessed no discretionary power to subscribe stock to the Cleaveland and Pittsburgh Railroad Company, or to borrow money, or to execute and deliver bonds and coupons of said county in payment thereof, without the preceding action and determination of the grand jury, clearly, definitely, and unambiguously had and obtained.

3d. That the presentment of the grand jury of Beaver county, of June 8th, 1853, is defective and invalid in not "fixing and determining the amount" of proposed subscription of stock to the Cleaveland and Pittsburgh Railroad Company, in as much as no mere "recommendation" of said grand jury could confer upon the commissioners of Beaver county any derivative and competent authority whatever, enabling them to subscribe or to enter into any valid agreement to subscribe stock to said railroad company on behalf of said county, or to borrow money or issue valid bonds and coupons in payment thereof.

4th. That if the grand jury, by their report and recommendation of June 8th, 1853, did confer any authority for such subscription, for the sum of $100,000 of stock in said railroad company, the commissioners afterwards, by the resolution of July 15th, 1853, fixing the amount of said subscription at $50,000, assumed a discretionary power not at all conferred upon them by the act of assembly, thereby rendering such subscription illegal and nugatory, and the bonds and coupons, or any assumption whatever in consideration thereof, invalid.

The judges being divided in opinion whether the instructions prayed for in the second, third, and fourth points should be given to the jury or referred, it is therefore ordered that the same be certified to the Supreme Court of the United States.

R. C. GRIER, [SEAL.]
Circuit Judge.
WILSON McCANDLESS, [SEAL.]
U. S. District Judge.

Upon which prayer the said judges were divided in opinion:

Wherefore, the said defendant requested the said judges to certify under their hands and seals, and cause to be certified under the seal of the said court, their division of opinion upon the said prayers of the said defendants to the Supreme Court of the United States of America, which is accordingly done, and the clerk of the said circuit court is hereby ordered to certify the same under the seal of our said court, to the said Supreme Court at the next session.

In testimony whereof we have hereto set our hands and seal the 26th day of November, Anno Domini one thousand eight hundred and fifty-nine.

R. C. GRIER, [SEAL.]
WILSON McCANDLESS, [SEAL.]
U. S. District Judge.

United States of America, western district of Pennsylvania, sct.

I, Henry Sproul, clerk of the circuit court of the United States for the western district of Pennsylvania, in the third circuit, do hereby certify that the foregoing is a true and correct copy of the certificate of division of opinion of the judges as filed in the foregoing case.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Pittsburgh, this 25th [SEAL.] day of January, A. D. 1860, and in the independence of the United States the 84th.

H. SPROUL, *Clerk.*